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# OCCUPATIONAL TAXES

H. WILLIAM IHRIG\*

**J**OBLESS men seek reopened factories, not more charity; farmers with unsold produce seek markets, not moratoria; and business men seek orders for their goods to protect their capital investments, not speculative profits. Legislators seek to obtain relief and to prevent suffering among their constituents and propose appropriations to directly carry out such laudable aims. But legislative efforts to stimulate business and increase markets seem to be missing.

In international business activities one finds national legislative attempts at self help and toward protection of home markets to better the working and market conditions, but in the smaller internationalism of our respective states which are in economic and political aspects also sovereign and masters of their local conditions as larger nations we find a disdain or disregard of legislative efforts of self help and protection of home markets and stimulation of home industry.

In the pioneer days states and localities were not too proud to stimulate business and offer inducements by subsidies and tax preferences and exemptions and free land to develop jobs and markets for their citizens, but now we have the plains of unemployment and the fields of plenty but not the activity that makes of factories work places rather than mere piles of brick and iron and of fields, and herds the basis of a state and nation's prosperity rather than mere sources of straw and cornstalks and milk to fill cans. Governmental subsidies are always a relief offered in extremes and will not here be discussed. Free lands are matters of local rather than statewide inducement of location. Our present problems are to revivify our present existing farms and factories.

Tax exemptions are now provided by law to a limited extent. As to real estate tax exemptions, outside of eleemosynary institutions, homesteaders are exempted from taxes for five years<sup>1</sup> and Wisconsin corporations formed for the purpose of manufacturing oxide of zinc or metallic zinc from native ores of Wisconsin are exempt from taxation for three years<sup>2</sup>. Exemptions, of course, are made of numerous articles of personal property from taxation and in the income and inheritance tax acts graduated taxes are applied with initial exemptions. Certain attempts have also been made to simplify the method of taxation of

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<sup>1</sup> Section 70.11 (30) of 1931 Wisconsin Statutes.

<sup>2</sup> Section 70.11 (17) of 1931 Wisconsin Statutes.

certain occupations so that the tax levied will be in lieu of others. These will be later discussed in detail.

Tax preferences have not been attempted except as might be included in the fact that simplification of tax methods, which will be hereafter discussed, have only benefited a limited portion of Wisconsin's taxpayers.

The question of "policy" in taxation, of course, is strictly a legislative one. When the question of inequality of tax burdens has been presented to the courts, they almost uniformly refer that question as one of public policy back to the legislature. In an early case when our economic life was much simpler than now and the tax burdens more clear of application, we find Judge Cooley saying:

"If the precise point here is that the tax is unequal and unjust because it is not levied in proportion to the business done, then the objection is without force. *It may possibly be true that an apportionment according to the business done would have been more just, but a question of this nature concerns the legislature, not us.* Courts cannot annul tax laws because of their operating unequally and unjustly. If they could, they might defeat all taxation whatsoever; for there never yet was a tax law that was not more or less unequal and unjust in its practical workings. \* \* \* But the objection to want of uniformity is wholly misplaced here. Uniformity is the very basis of this tax (a graduated license tax on wholesale and retail dealers of spirituous, fermented and brewed liquors). It is levied without discrimination, and the real objection to it is, not that it lacks uniformity, but that the legislature was unjust in making it uniform, instead of levying it by some standard of discrimination. The objection presents a case of misapplication of terms. It is also presented to the wrong tribunal. The question whether a tax is just and equal or not, is not a question of law; and this will meet any objection to the law based upon the fact that other kinds of business are not similarly taxed. Apportionment of taxation is purely a legislative function."<sup>3</sup>

Another early court, discussing the same subject said:

"Independent of constitutional restrictions and prohibitions, the legislature is the sole judge of the propriety of taxation. It may select and define the sources from which the public revenue shall be derived, and prescribe the means by which taxes shall be laid, levied and collected."<sup>4</sup>

In this connection we remember the oft-quoted precept of Chief Justice Marshall:

"That the power to tax involves the power to destroy; that the

<sup>3</sup> *Youngblood v. Sexton*, 32 Mich. 406, 414, 415.

<sup>4</sup> *State v. Runyon*, 41 N. J. Law, 98, 1040.

power to destroy may defeat and render useless the power to create; \* \* \* are propositions not to be denied.”<sup>5</sup>

After reasonable reductions in public expenditures with the benefits attendant thereon, it seems highly desirable to seek a more just and equitable legislative yardstick to prevent the power of taxation from destroying the source of our employment and markets than are embodied in our system of general property and income taxation. Such a course could also aim at a revival of Wisconsin business and markets.

Along this line we find one of our major political parties in Wisconsin recommending in its recent platform a system of unemployment relief and business revival based on an appropriate taxation policy. That platform stated:

“We recommend solving the unemployment problem in Wisconsin by securing work for our people in furthering the sale of Wisconsin agricultural, dairy and manufactured products by a legislative program designed to give those Wisconsin groups a competitive edge over their competitors outside of the state so as to bring more employment to Wisconsin.”<sup>6</sup>

Such a policy can be carried out by a reduction of governmental expenditures, by an extension of the tax simplification program embodied in occupational taxes recognizing occupational distinctions in ability to pay taxes and give employment with exemption from other modes of taxation, by a transfer of part of the burden of taxation from real estate to a form of retail sales or turnover tax, and by a change in the exemptions from taxation.

The question of the legal aspects of occupational taxes in Wisconsin will be extensively considered herein. The question divides itself into a consideration of the constitutional questions as well as of detailed questions relating to occupational taxation itself. The “equal protection of the laws” assured to persons from the States under the 14th Amendment of the Federal constitution has come to mean something entirely different under our existing state taxation programs than lay persons would offhand imagine to have been intended.

The same can be said about Section 1 of Article VIII of the Wisconsin constitution which sets forth the constitutional rule of Wisconsin Taxation as follows:

“The rule of taxation shall be uniform, and taxes shall be levied upon such property with such classifications as to forests and minerals

<sup>5</sup> *McCulloch v. Maryland*, 4 Wheat. 429, 431.

<sup>6</sup> 1932 Democratic State Platform adopted at Democratic Platform Convention at Madison, October 4, 1932.

including or separate or severed from the land, as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."

Of the recent fashions in taxation considerable ado was made of the rule of thumb "that taxes should be levied where they could be best collected" and of the further rule "that legal redistribution of property was desirable and could be accomplished by a suitable taxation program." Fashions in taxation like other fashions change.

The makers of the Wisconsin constitutions in their wisdom foresaw these situations and concluded the Bill of Rights in the Wisconsin Constitution with an exhortation for the maintenance of free government by the following plea:

"The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."<sup>7</sup>

One of the fundamental rules of a democratic government is that government is instituted among men to secure men's rights to life, liberty and the pursuit of happiness. Some would have us believe that governments were created so that they might tax men out of home and business.

In Wisconsin it was early ruled that Section 2 of Article VIII of the Wisconsin constitution respecting appropriations which provides, "No money shall be paid out of the treasury except in pursuance of an appropriation by law," did not mean that the power of appropriation is unlimited. It was clearly held that such power must be restricted to public purposes.<sup>8</sup>

Similarly, attempts have been made to have the State go into business and give employment thereby to its needy and capable citizens, without respect for the provisions of Section 10 of Article VIII of the Wisconsin constitution which provides the general principle that "The state shall never contract any debt for works of internal improvement or be a party in carrying on such works" \* \* \* These fruitless promises have been asserted regardless of the Supreme Court decisions that this limitation prevents the State from engaging in any kind of work appertaining to business enterprise and public purpose except as such works are used exclusively by and for the State as a sovereign in the performance of its governmental functions.<sup>9</sup>

<sup>7</sup> Section 22, Article 1, Wisconsin Constitution.

<sup>8</sup> State ex rel. Garrett vs. Froehlich, 119 Wis. 1291, 94 N.W. 50.

<sup>9</sup> Rippe v. Becher, 56 Minn. 100, 57 N.W. 331; State ex rel Jones vs. Froehlich, 115 Wis. 32, 91 N.W. 115.

For the maintenance of government taxation is essential but it is an equally true political consideration that taxes levied under any principle should not by their nature amount to confiscations. Such a possibility means that government is failing in its fundamental purpose.

Firstly, of course, when taxes are burdensome reduced appropriations should be immediately effected.

Secondly, an examination of these methods of taxation might disclose, due to changed conditions compared with the time when said taxes were imposed that changes in the method of taxation are necessary if there is to be a "uniform rule of taxation."

Thirdly, it may be necessary to prevent confiscation by taxation and to bring the tax within the taxpayers' ability to pay, to adopt different rates of taxation for different subjects of taxation.

As a community changes from one based on the economy of agriculture, or dairying, or shipping, or manufacturing, or commerce to one based on some other fundamental economic endeavor, or becomes a composite of these, there is an economic change constantly taking place as to the position of that community with its competitor community with whom it is in actual competition to dispose of its produce. Within the community there are changes in each particular branch of economic endeavor taking place which are placing that taxpaying group nearer to or farther away from having to close up as a sub-marginal unit. This process can be hurried or made slower by the nature of the rates of taxation placed on such industry compared with the rates of taxation placed on its competitors in other communities.

It is not suggested that within an industry (so-called) individual differences of management problems should be considered in fixing their rates of taxation. Rather, it is suggested that rates of taxation can be fixed by industrial groupings for which there can be general agreement that there is industrial unity and for which there can be general agreement that their ability to pay taxes is based on the same general circumstances and whose ability to employ labor and otherwise use goods reflect as a group tax rate changes. The groupings are suggested to reflect state-wide conditions compared with those same competitive industries of the same lines in other states due to change of source of raw materials, change of transportation facilities, change of location of competitors and to reflect differences in turnover in relation to plant investment, etc.

In connection with the question of industrial classification for tax purposes we will recall that the Wisconsin constitution provides:

"Taxes may be imposed on incomes, privileges and occupation, which taxes may be graduated and progressive, and reasonable exemptions may be provided."

To date the Wisconsin legislature has offered the rule of broad legislative discretion in making tax classifications and providing taxation exemptions. This applies even to the same types of articles owned by persons in different classifications. Recently the Wisconsin Supreme Court said:

"It is well established in this state that there is the amplest power on the part of the Legislature to exempt an entire class of property from taxation, and to make such class very narrow."<sup>10</sup>

The same court has long adhered to the rule that:

"Uniformity in the rule of taxation does not require uniformity as to the subjects of taxation or the subjects as to which exemptions are provided."<sup>11</sup>

Recently the Wisconsin Supreme Court also declared:

"It follows that if there are bases for classification \* \* \* there is no unlawful discrimination."<sup>12</sup>

The early established rule has been always adhered to. It is stated as follows:

"Taxes can only be levied upon such property as the legislature shall prescribe, and then only by a uniform rule, but it is the "rule," and not the property, which the constitution requires to be uniform. \* \* \* The Legislature not only has power to prescribe the property to be taxed, but the rule by which it must be taxed; and the only limitation upon that power is that the rule so prescribed shall be uniform. \* \* \* The power to prescribe what property shall be taxed necessarily implies the power to prescribe what property shall be exempt."<sup>13</sup>

As an example of Legislative powers to classify for tax purposes we find in the Ton mile tax decision the Wisconsin Supreme Court laid down the following rules relating to classifications possible for which the legislature may apply different tax rates.<sup>14</sup>

This case held that:

- (1) A classification for tax distinctions could be drawn between motor vehicles used for transporting passengers and those used for hauling freight, the tax on one class to be at a flat

<sup>10</sup> State vs. Public Service Comm. of Wis. --Wis.--, 242 N.W. 668 at 672.

<sup>11</sup> Wis. Cent. R.R. Co. vs. Taylor County, 52 Wis. 37, 8 N.W. 833; C. N. W. R. Co. vs. State, 128 Wis. 553, 108 N.W. 557; Nash Sales, Inc., vs. Milwaukee, 198 Wis. 281, 224 N.W. 126; State ex rel B. Stern & Sons vs. Bodden, 165 Wis. 75, 160 N.W. 1077.

<sup>12</sup> T.M.E.R. & L. Co. vs. Wis. Tax. Com. --Wis.--, 242 N.W. 312 at 319.

<sup>13</sup> Wisconsin C. R. Co. vs. Taylor Co. 52 Wis. 37 at 95, 8 N.W. 833.

<sup>14</sup> State vs. Public Service Comm. of Wis. --Wis.--, 242 N.W. 668.

rate and on the other at a graduated rate, even though both were owned and operated by hauling companies.

- (2) A classification of exempting motor vehicles under 3 tons from those over 3 tons was also proposed.
- (3) A classification of exemptions from taxation on motor vehicles hauling companies of motor vehicles used exclusively in transporting dairy or other farm products between points of production and primary market was also proposed, and
- (4) That classification of dairy or other farm products as used in said Exemption Statute did not include malted, condensed, evaporated, or powdered milk or ice cream.

Generally an occupational tax, in Wisconsin, is based on the theory of a classification for taxing purposes based on occupational distinctions. It is based on a license theory but is primarily to raise revenue, with the factors of regulations only being incidental. It is not necessarily exclusive of other forms of taxation but usually has been applied with an attendant exemption provided for some or all other forms of general taxation. In its most frequent application its rate varies for different occupational classifications but it is more generally applied as a gross sales tax. In this respect it is another form of taxation akin to income taxation. The occupational tax, however, has the facility of being more justly and beneficently applied than the present forms of general taxation.

The increasing tendency towards a general extension of the principles of the occupational tax in lieu of other forms of general taxation indicates it is more adapted to justice and facility than the time revered general property tax, especially with respect to complex property aggregations which we find in our present specialized economic development.

The occupational tax is one form of excise tax. It differs from the usual license tax which usually has a flat rate, even though graduated, and which usually has as its prime purpose regulation of public conduct in furtherance of the legislative exercise of the police power. In such a case the revenue question is not legally accorded prime significance in testing out the exercise of such licensing power.<sup>15</sup>

An aspect of an occupational tax is that it is levied on the amount of business.<sup>16</sup>

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<sup>15</sup> *Provo City vs. Provo M. & P. Co.* 49 Utah 520, 165 Pac. 477, 479; *Duff vs. Gordan City*, 122 Kansas 390, 251 Pac. 1091; *McMillan vs. Knoxville*, 139 Tenn. 319, 202 S.W. 65; *State vs. C. N. W. R. Co.* 128 Wis. 449, 108 N.W. 594; *State vs. Heenemann*, 80 Wis. 253, 49 N.W. 819; *Tenney vs. Lenz*, 16 Wis. 566.

<sup>16</sup> *Pacific Tel. Tel. Co. vs. Everett*, 97 Wash. 259, 166 Pac. 650, 653; *Choctaw O. G. R. Co. vs. Harrison*, (Okla.) 208 U.S. 292.

The generally accepted definition of excise taxes is Cooley's quoted by the U. S. Supreme Court as "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges."<sup>17</sup> Excise taxes are indirect taxes and have no reference to earnings or income except that the sum of such earnings or income may be made the measure of the tax.<sup>18</sup> In State taxation the most common form of excise tax is the occupation or license tax.<sup>19</sup> While in some states the constitutions thereof expressly authorize excise taxes by name, in other states their respective constitutions expressly authorize occupation taxes with or without limitation. The latter is the Wisconsin situation.

There are important distinctions between property taxes and excise taxes including occupational taxes and it is important to determine the exact nature of a tax from this standpoint.<sup>20</sup> One of the most important distinctions between property and excise or occupation taxes is that the latter are not usually held to be within the constitutional requirement of uniformity and equality of taxation.<sup>21</sup> In this respect the Wisconsin constitution says "\* \* \* Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."<sup>22</sup> Consequently a tax on gross receipts is generally held not a property tax within the requirement of equality and uniformity of taxation.<sup>23</sup>

The basis for computing occupation taxes generally is

- (1) At a flat rate for the privilege of carrying on the business;
- (2) On the amount of business done;
- (3) On the gross profits; or
- (4) On the net profit or profits divided. But it may be measured by still other standards prescribed for the purpose.<sup>24</sup>

As to the basis for classification of taxes the Wisconsin rule is particularly broad and elastic as pointed out elsewhere herein. Recognizing the fallacy of measuring unequals with the same yardstick for

<sup>17</sup> *Flint vs. Stone Trocy Co.* 220 U.S. 107.

<sup>18</sup> *Black vs. State*, 113 Wis. 205, 89 N.W. 522; *Pollock vs. Farmer's Loan & Trust Co.* 157 U.S. 429, 592.

<sup>19</sup> *U. S. vs. Philadelphia B. W. R. Co.* 262 Fed. 188.

<sup>20</sup> *State vs. Citizens Bank of La. (La.)* 27 So. 709.

<sup>21</sup> *Chicago N. W. R. Co. vs. State*, 128, Wis. 553, 589, 108 N.W. 559; *Stull vs. De Mattos*, (Wash.) 62 Pac. 451; *Ogden City vs. Crossman*, (Utah) 53 Pac. 985; *Trustees, etc. Corp. vs. Hooton*, (Okla.) 157 Pac. 293; *Conn. Mut. L. I. Co. vs. Comm.* 133 Mass. 161.

<sup>22</sup> Section 1 of Article VIII of Wisconsin Constitution

<sup>23</sup> *Queen City F. I. Co. vs. Basford*, (S.D.) 130 N.W. 44; Chapter 28, Occupation Taxes, Cooley on Taxation (4th Edition).

<sup>24</sup> *Scottish U. & N. I. Co. vs. Herriott*, (Iowa) 80 N.W. 665.

tax purposes the Wisconsin Legislature has provided a more equal tax rule based on occupational differences, but such equality has not been generally applied. Examples of such efforts to seek to do justice so as to bring taxation within the rules of "ability to pay" and "taxation without confiscation" are found in the taxation of "coal, grain, lead and zinc, warehouses, banks, insurance companies, public utilities, railroads, etc."

Glaring examples of the failure to apply such segregated rules are found in the taxation of real estate disregarding the fluctuation in income and of its earning power therefrom, the taxation of dairy and cheese producing facilities, of lumbering, of paper-making, of heavy and light machine manufacture, of leather and leather goods manufacture, and many other special fields of production disregarding questions of trade variations in rates of plant turnover, and in conditions of partially shutdown plant conditions, throwing the tax burden as well as depreciation burden on the limited plant and machinery involved, and also variable factors in sub-marginal plant locations due to changing trade conditions. As nations are units by virtue of tariff and trade preferences for their industries keeping their own wheels turning, so can states protect their labor, agriculture, dairy and industrial groups for that state's benefit in their competition with the competitive units in other states.

The occupational distinctions for tax purposes drawn in Wisconsin today are:

I. Steam vessels, barges, boats or other watercraft owned within this state, or hailing from any part thereof, and employed regularly in interstate traffic are subject to a tax equal to one cent per ton of registered tonnage thereof and are then exempt from further taxation, either state or municipal.<sup>25</sup> Further, all vessels, boats, barges or other watercraft belonging to inhabitants of states other than Wisconsin and laid up for repairs in Wisconsin ports are exempt from all Wisconsin taxation.<sup>26</sup> At the same time all vessels, boats, or other watercraft not regularly employed in interstate traffic and all private yachts or pleasure boats belonging to inhabitants of this state, whether at home or abroad, are taxed as other personal property and at the same rates.<sup>27</sup> The legislative intention to develop commercial shipping and to favor port developments for Wisconsin over other states is singularly apparent in this field.

II. Lands containing deposits of lead or zinc are singularly assessed and taxed. First, the value of each parcel of land is fixed ex-

<sup>25</sup> Section 70.15 of 1931 Wisconsin Statutes.

<sup>26</sup> Section 70.11, (38) of 1931 Wisconsin Statutes.

<sup>27</sup> Section 70.15 (2) of 1931 Wisconsin Statutes.

clusive of its mineral content, and to this is added in lieu of the value of the mineral content, one-fifth of the gross amount of sales of any ore, mineral or deposit extracted from such land at any time and sold during the preceeding calendar year. Such arbitrary amount is placed on the tax as the assessment value of the real estate on which is levied the regular real estate tax rate of that taxing district.<sup>28</sup> Of course, the buildings, machinery, mills, equipment, stores, supplies or other personal property of persons, etc. engaged in mining or extraction of such deposits are subject to the usual rules of taxation and are not exempt from taxation.<sup>29</sup>

Then there is the further exemption in this connection of the property of any corporation or association formed under the laws of this state, which property is used exclusively for the purpose of manufacturing oxide or metallic zinc from native ores of the state. This exemption from taxation continues three years.<sup>30</sup>

III. The taxation of the income of state banks, national banks, and trust companies is in lieu of all taxes upon the capital, surplus, property, and assets of such banks, except that no real estate owned by any bank or banking association or constituting the whole or any part of its capital surplus or assets is exempt from taxation.<sup>31</sup>

IV. Grain received in or handled by grain elevators or warehouses in this state, except elevators and warehouses on farms for the storage of grain and used by the owner thereof, is subject to an annual occupation tax of one-half mill per bushel upon wheat and flax and one-fourth mill per bushel upon all other grain, and such grain is then exempt from all taxation either state or municipal.<sup>32</sup> In this connection it will be remembered that merchandise placed in storage in the original package in a commercial warehouse is, while so in storage, considered in transit and not subject to taxation.<sup>33</sup> This occupational tax on grain in elevators and warehouses is collected in the same manner as a personal property tax and is collected in the basing district where such elevator or warehouse is situated, and when paid may be credited to or offset against income taxes in the same manner as personal property taxes are credited or offset as provided in Section 71.21 of Statutes of 1923.<sup>34</sup>

V. Coal dock operators in this state other than of docks used

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<sup>28</sup> Section 70.33 of 1931 Wisconsin Statutes.

<sup>29</sup> Section 70.33 (1) of 1931 Wisconsin Statutes.

<sup>30</sup> Section 70.11 (17) of 1931 Wisconsin Statutes.

<sup>31</sup> Section 70.40 of 1931 Wisconsin Statutes.

<sup>32</sup> Section 70.41 of 1931 Wisconsin Statutes.

<sup>33</sup> Section 70.11 (37) of 1931 Wisconsin Statutes.

<sup>34</sup> Section 70.41 (3) of 1931 Wisconsin Statutes.

solely in connection with an industry and handling no coal except that consumed by such industry, pay an annual occupational tax of one and one-half cents per ton upon all anthracite coal handled by or over such coal dock, and such coal is exempt from all taxation either state or municipal.<sup>35</sup> The above occupational tax on coal may be credited to or offset against income taxes as is the case with the occupational tax on grain in elevators and warehouses. This tax is not retained by the taxing district where collected but is divided, ten per cent to the state, twenty per cent to the county, and seventy per cent to the town, city or village in which such taxes are collected.<sup>36</sup>

VI. Motor vehicles are subject to the gasoline tax,<sup>37</sup> registration fees,<sup>38</sup> and ton mile taxes,<sup>39</sup> but they are exempt from property levies<sup>40</sup> except where owned by public utilities.<sup>41</sup>

VII. Oleomargarine manufactures and wholesale and retail dealers, proprietors of hotels, boarding houses, restaurants, bakeries, and confectionaries making, selling, handling and using, have been segregated into groups on which a classified occupational tax has been placed ranging from \$1,000.00 a year for manufacturers to \$5.00 for proprietors of boarding houses, bakeries and confectioners.<sup>42</sup>

VIII. Public Utilities and Insurance companies generally in Wisconsin are classified for separate rules of taxation from other business,<sup>43</sup> and exempt from other general taxation.<sup>44</sup>

IX. Forest co-op laws which provide for 10 cents per acre annual tax and an ultimate 10 per cent severance tax in lieu of general property tax. Under this provision the state advances annually an acre 10 cents per acre to the local taxing district and receives the ultimate 10 per cent severance tax.<sup>45</sup>

X. Cooperative associations and corporations for the most part are exempt from income taxation<sup>46</sup> as to their incomes and do not even have to file income tax reports.<sup>47</sup>

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<sup>35</sup> Section 70.42 of 1931 Wisconsin Statutes.

<sup>36</sup> Section 70.42 (3) of 1931 Wisconsin Statutes.

<sup>37</sup> Section 78.07 of 1931 Wisconsin Statutes.

<sup>38</sup> Section 85.01 of 1931 Wisconsin Statutes.

<sup>39</sup> Section 76.54 of 1931 Wisconsin Statutes.

<sup>40</sup> Section 70.11 (35) of 1931 Wisconsin Statutes.

<sup>41</sup> *T. M. E. R. & L. Co. vs. Wisconsin Tax Comm.* \_\_Wis.\_\_, 242 N.W. 312.

<sup>42</sup> Chapters 3 and 17 of 1931 Special Session of Wisconsin Legislature, Section 98.39 of Wisconsin Statutes.

<sup>43</sup> Chapter 76 of 1931 Wisconsin Statutes; but see: *T. M. E. R. & L. Co. vs. Wis. Tax. Comm.* \_\_Wis.\_\_, 242 N.W. 312.

<sup>44</sup> Section 76.23 of 1931 Wisconsin Statutes.

<sup>45</sup> Chapter 77 of 1931 Wisconsin Statutes.

<sup>46</sup> Section 71.05 (1), (d), (g), of 1931 Wisconsin Statutes.

<sup>47</sup> Section 185.23 of 1931 Wisconsin Statutes.

XI. Mutual Savings banks, mutual loan associations, and building and loan associations are exempt from income taxation as to their income,<sup>48</sup> but not from real estate taxation.<sup>49</sup>

The variation in tax rates made possible to suit the requirements of various kinds of property involved is partially set forth above. As additional illustrations we find the following:

- (a). Fire and marine insurance companies: a tax of  $2\frac{3}{8}\%$  on the amount of gross premiums received for direct insurance, less return premiums and cancellations on direct insurance.
- (b). Casualty and suretyship companies:  $2\%$  on gross premiums received during preceding year on all policies or contracts written on the lives of residents or property in this state
- (c). Life insurance companies: generally  $3\frac{1}{2}\%$  on gross income.<sup>50</sup>

From the foregoing we see that the general plan of occupational taxation is to require a license at a nominal annual charge to cover bookkeeping and inspection charges, said license covering the persons and corporations engaged in a given classification. Said license has no discretionary aspects but is the basis for a taxation plan based as above set forth. The most general plan of having the said occupational tax is on the basis of a general manufacturer's sales tax or a tax on gross receipts.

The intent of such a system is to prevent a confiscation of non-productive plant and machinery, and, vice versa, to obtain proper taxation in times of incoming business and prosperity. For dairy factories and other manufacturers the plan can very simply be roughly set at a flat rate for classification to represent the average rate in good times (as 1928-1929) if the total property and income taxes when paid were set over against gross sales, this rate to apply at all times. Also, provision can be made for the tax commission to investigate the corporation tax rates between Wisconsin groups and competitor groups outside of Wisconsin and make recommendations respecting changes to the legislature, as is the function of the Federal Tariff Commission. This would give Wisconsin proper investigation of many political questions.

Many such state systems have been enacted, and we find legal confirmation of the theory of a more adjustable yardstick of taxation, based upon gross sales or income, to wit: "We must conclude, therefore, that a classification of coal mining and purchasing and selling companies is not beyond the legislative power, and the tax being clearly

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<sup>48</sup> Section 71.05 (1) (2) of 1931 Wisconsin Statutes.

<sup>49</sup> Section 70.40 and 215.23 of 1931 Wisconsin Statutes.

<sup>50</sup> Chapter 76 of 1931 Wisconsin Statutes.

uniform upon their business, measured by the extent of it, is not only within the meaning of the constitution, but is just and equitable."<sup>51</sup> It is interesting to note that the first Wisconsin case on taxation approved the principles herein discussed, i.e., a tax on railroads based on gross earnings.<sup>52</sup>

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<sup>51</sup> *Kittanning Coal Co. v. Commonwealth*, 79 Pa. St. 100 at 104.

<sup>52</sup> *M. M. R. R. Co. v. Waukesha*, 9 Wis. 449.